



## TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

### **LEGISLATIVE PROPOSAL (T&E-2006-08): CREDITORS' CLAIMS: HARMONIZATION OF STATUTORY PROVISIONS**

TO: State Bar Office of Governmental Affairs

FROM: Margaret Hand, Trusts & Estates Section Executive Committee

DATE: August 1, 2005

RE: Harmonization of creditor's claim statutes (Project 02-03)

#### **SECTION ACTION AND CONTACT(S):**

Author: Trust and Estate Administration Committee  
Date of Approval by Section Executive Committee: March 9, 2002  
Approval vote: Unanimous

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#### **DIGEST:**

Current law provides for comparable provisions in a probate proceeding and trust administration for the treatment of creditor claims. These provisions, however, are not identical. The procedure provided for in a probate is mandatory, while the trust procedure is optional. The probate procedure is located in Division 7, Part 4 of the Probate Code, §§9000 *et seq.* It is well established, having been part of a probate since codification. The trust procedure is located in Division 9, Part 8 of the Probate Code, §§19000 *et seq.* The trust procedure was added to the Probate Code effective January 1, 1992. Amendments were made to both Part 4 and Part 8 in 1996 for the purpose of maintaining conformity between these proceedings whenever possible. Nevertheless, ideal conformity was not accomplished. This proposal is to remedy those discrepancies between Part 4 and Part 8 that remain.

## **PURPOSE:**

The proposal seeks to establish a uniform regime for creditors' claims regardless whether the decedent utilized a will or revocable trust as the primary estate planning instrument. Nevertheless, this attempt to create uniformity for creditors preserves the substantive distinction between a probate proceeding and a trust administration for creditors. The procedure remains mandatory in a probate, while remaining elective in a trust administration. In either case, other applicable statutes of limitation, such as CCP §366.2, remain unaffected.

## **APPLICATION:**

A. Throughout the 9000 et seq. sections of the Probate Code, the term creditor is used without any definition provided for the term. In the 19000 et seq. sections, the term claimant and creditor are used interchangeably. To provide consistency and understanding to §9000 et seq. and §19000 et seq., a definition of creditor is being added to §9000(c) and §19000(c) is being modified to provide a definition for creditor in lieu of the word claimant. The following sections are also being modified to remove the word claimant and substitute creditor: 19100, 19103 and 19104.

§§ 9100 and 9103 were amended in 1996 to provide for longer time periods for creditors to file claims after notice is provided to them. §§ 19100 and 19103 are being amended to provide for the same time periods in trust creditor situations as are provided in probate creditor situations.

Probate Code §19100 provides that the time period for filing a claim starts when notice is mailed or personally delivered. §9100 provided that the time period runs when notice is given. There is no definition of the word given. To provide clarity in §9100 and consistency between 19100 and 9100, §9100 should be amended to remove the word given and replace it with mailed or personally delivered.

Probate Code §19100 provides references to other code sections. The references to the other code sections is duplicative and not necessary and makes it appear that there are other requirements in the trust creditor claim statutes that do not exist in the probate creditor claim statutes. The extraneous provisions in §19100(a)(2) and (b) should be removed.

Probate Code §9100 was amended in 1996 to provide for clarity that the provisions for creditors claims does not extend the statute of limitations. §19100 should be amended to provide the same clarity.

Probate Code §§ 9102 and 19102 should be amended to provide consistency. The titling of §19102 should be amended to provide consistency with the titling of §9102. §9102 should be amended to provide clarity as the time period that is referenced in the statute.

Probate Code §9103 was amended in 1996 to provide clarity on the mechanisms for filing a late claim. §19103 should provide for the same mechanisms and time periods for filing a late claim in trust situations.

Probate Code §19104 provides clarity that nothing in the creditor claim provision extends the statute of limitations. The same clarity should be added to §9104. Also, to provide consistency, §19104 should be broken out into subparagraphs as are set forth in §9104.

B. §19201 deals with claims by public entities against a trust under certain specific statutes. §9201 deals with claims filed in probate by public entities under specific statutes. With one exception, the list of statutes under these two sections is identical. §19201 references the “Personal Income Tax Law (Part 10 (commencing with §17001) of Division 2 of the Revenue and Taxation Code,” citing Revenue and Taxation Code §19266 as the applicable section. §9201 references the “Administration of Franchise and Income Tax Law (commencing with Section 18401 of the Revenue and Taxation Code),” citing Revenue and Taxation Code §19517 as the applicable section. The committee believes that the reference in §19201 to the Personal Income Tax Law and to Revenue and Taxation Code §19266 is outdated and should be amended to conform to §9201’s reference to Administration of Franchise and Income Tax Law and to Revenue and Taxation Code §19517.

§19202 requires a trustee who knows or has reason to believe that the deceased settlor received MediCal benefits to give notice of the settlor’s death to the State Director of Health Services. §9202 imposes the same duty on the personal representative of an estate if he or she knows or has reason to believe that the deceased settlor received MediCal benefits *or was the surviving spouse of a person who received that health care*. The committee believes that §19202 should be conformed to §9202 to extend the trustee’s duty to notify the State Director to situations where the trustee believes that the decedent was the surviving spouse of a MediCal recipient. Such a modification will promote consistency between trust administration and probate procedures.

§19203 states that if property in a trust is distributed before the expiration of the time allowed a public entity to file a claim, the public entity’s claim against the distributees includes interest at a rate equal to that “earned in the Pool Money Investment Account pursuant to Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code....” Similarly, §9203 states that if property in a probate is distributed before the expiration of the public entity’s filing period, the public entity’s claim against the distributees includes interest. However, the rate of interest specified in §9203 is “a rate equal to that specified in Section 19521 of the Revenue and Taxation Code....” The committee believes that of the two references, the more appropriate interest rate is that specified in Revenue and Taxation Code §19521, which imposes interest according to the applicable federal rate. Accordingly, the committee recommends that §19203 be conformed to §9203 to reference interest at the Revenue and Taxation Code §19521 rate.

C. §19304(c) allows family members of a deceased settlor’s family who were supported in whole or in part by the deceased settlor (or the trustee on the family members’ behalf) to claim exemption for property levied on under a writ of attachment. The section requires that the claim be made in the same manner as an exemption is claimed under CCP §485.610 (which governs when exemption claims can be made in response to ex parte applications for attachment liens). Probate Code §9304(c) provides the same relief to family

members of a decedent, but requires that the claim be made in the same manner as an exemption claimed under CCP §482.100 (which governs when exemption claims can be made or renewed due to changed circumstances). As both sections are intended to provide flexibility for a family member or personal representative/trustee in asserting a claim of exemption due to a particular “changed circumstance” -- the death of the testator or settlor -- the committee believes that the amendment of §19304(c) to refer to CCP §482.100 in place of CCP §485.610 will both promote consistency between comparable probate and trust administration procedures and further the intent of the statutes.

**DOCUMENTATION:**

None.

**HISTORY:**

AB 2751 (Kaloogian) of 1996 (Chapter 862), a measure sponsored by the Trusts & Estates Section (then known as the Estate Planning, Trust & Probate Law Section) revised many of the code sections affected by this bill. There have been no subsequent legislative attempts to amend these provisions.

**PENDING LITIGATION:**

None known.

**FISCAL IMPACT:**

None anticipated.

**LIKELY SUPPORT/OPPOSITION:**

No opposition anticipated.

**GERMANENESS:**

Probate and trust administration are matters central to the interests and expertise of the members of Trusts and Estates Executive Committee.

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## TEXT OF PROPOSAL

SECTION 1. Section 9000 of the Probate Code is amended to read:

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent's death, whether assessed before or after the decedent's death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

(c) *"Creditor" means a person who may have a claim, as defined in subdivision (a), against estate property.*

SEC. 2. Section 9100 of the Probate Code is amended to read:

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Sixty days after the date notice of administration is ~~given~~ *mailed or personally delivered* to the creditor. Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure.

(b) A reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a).

(c) Nothing in this section shall be interpreted to extend or toll any other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this subdivision to a "statute of limitations" includes Section 366.2 of the Code of Civil Procedure.

SEC. 3. Section 9102 of the Probate Code is amended to read:

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time *for filing claims*.

SEC. 4. Section 9103 of the Probate Code is amended to read:

9103. (a) Upon petition by a creditor or the personal representative, the court may allow a claim to be filed after expiration of the time for filing a claim provided in Section 9100 if either of the following conditions is satisfied:

(1) The personal representative failed to send proper and timely notice of administration of the estate to the creditor, and that petition is filed within 60 days after the creditor has actual knowledge of the administration of the estate.

(2) The creditor had no knowledge of the facts reasonably giving rise to the existence of the claim more than 30 days prior to the time for filing a claim as provided in Section 9100, and the petition is filed within 60 days after the creditor has actual knowledge of both of the following:

(A) The existence of the facts reasonably giving rise to the existence of the claim.

(B) The administration of the estate.

(b) Notwithstanding subdivision (a), the court shall not allow a claim to be filed under this section after the court makes an order for final distribution of the estate. Nothing in this subdivision authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the creditor's petition if a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among creditors.

(d) Regardless of whether the claim is later established in whole or in part, payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Section 9392 and subject to Section 9053, the personal representative or payee is not liable on account of the prior payment. Nothing in this subdivision limits the liability of a person who receives a preliminary distribution of property to restore to the estate an amount sufficient for payment of the distributee's proper share of the claim, not exceeding the amount distributed.

(e) Notice of hearing on the petition shall be given as provided in Section 1220.

SEC. 5. Section 9104 of the Probate Code is amended to read:

9104. (a) Subject to subdivision (b), if a claim is filed within the time provided in this chapter, the creditor may later amend or revise the claim. The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision to specify the amount of a claim that, at the time of filing, was not due, was contingent, or was not yet ascertainable, is not an increase in the amount of the claim within the meaning of this subdivision.

(c) An amendment or revision may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after letters are first issued to a general personal representative. *Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.*

SEC. 6. Section 9250 of the Probate Code is amended to read:

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in ~~Part 2 (commencing with Section 1200) of Division 3~~ *Section 1215*, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

(1) The name of the creditor.

(2) The total amount of the claim.

(3) The date of issuance of letters.

(4) The date of the decedent's death.

(5) The estimated value of the decedent's estate.

- (6) The amount allowed or rejected by the personal representative.
- (7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400)).
- (8) A statement that the creditor has ~~three months~~ 90 days in which to act on a rejected claim.
- (d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.
- (e) This section does not apply to a demand the personal representative elects to treat as a claim under Section 9154.

SEC. 7. Section 9353 of the Probate Code is amended to read:

9353. (a) Regardless of whether the statute of limitations otherwise applicable to a claim will expire before or after the following times, a claim rejected in whole or in part is barred as to the part rejected unless, within the following times, the creditor commences an action on the claim or the matter is referred to a referee or to arbitration:

(1) If the claim is due at the time the notice of rejection is given, ~~three months~~ 90 days after the notice is given.

(2) If the claim is not due at the time the notice of rejection is given, ~~three months~~ 90 days after the claim becomes due.

(b) The time during which there is a vacancy in the office of the personal representative shall be excluded from the period determined under subdivision (a).

SEC. 8. Section 19000 of the Probate Code is amended to read:

19000. As used in this part:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated:

(1) Liability of the deceased settlor, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the deceased settlor's death, whether assessed before or after the deceased settlor's death, other than property taxes and assessments secured by real property liens.

(3) Liability for the funeral expenses of the deceased settlor.

(b) "Claim" does not include a dispute regarding title to specific property alleged to be included in the trust estate.

(c) ~~"Claimant"~~ "Creditor" means a person who may have a claim, as defined in subdivision (a), against trust ~~property and who has filed a timely claim pursuant to Section 19100.~~

(d) "Trust" means a trust described in Section 18200, or, if a portion of a trust, that portion that remained subject to the power of revocation at the deceased settlor's death.

(e) "Deceased settlor" means a deceased person who, at the time of his or her death, held the power to revoke the trust in whole or in part.

(f) "Debts" means all claims, as defined in subdivision (a), all expenses of administration, and all other proper charges against the trust estate, including taxes.

SEC. 9. Section 19011 of the Probate Code is amended to read:

19011. (a) The Judicial Council may prescribe the form and contents of the petition, notice, claim form, and allowance or rejection form to be used pursuant to this part. The allowance or rejection form may be part of the claim form.

(b) Any claim form adopted by the Judicial Council shall inform the ~~claimant~~ *creditor* that the claim must be filed with the court and a copy mailed or delivered to the trustee. The claim form shall include a proof of mailing or delivery of a copy of the claim to the trustee, which may be completed by the claimant.

SEC. 10. Section 19022 of the Probate Code is amended to read:

19022. (a) A proceeding under this chapter is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(b) The petition shall set forth a description of the trust and the names of ~~claimants~~ *creditors* with respect to which action is requested and a description of each claim, together with the requested determination by the court with respect to the claims, provided, however, that this section does not require the filing of a copy of the trust or disclosure of the beneficial interests of the trust. That petition shall also set forth the beneficiaries of the trust, those claimants whose interest in the trust may be affected by the petition, and the trustees of any other trust to which an allocation of liability may be approved by the court pursuant to the petition.

(c) The clerk shall set the matter for hearing.

SEC. 11. Section 19023 of the Probate Code is amended to read:

19023. At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing and a copy of the petition to be served on each of the ~~claimants~~ *creditors* whose interests in the estate may be affected by the petition in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

SEC. 12. Section 19025 of the Probate Code is amended to read:

19025. (a) If any ~~claimant~~ *creditor*, beneficiary, or trustee fails timely to file a written pleading upon notice, then the case is at issue, notwithstanding the failure. The case may proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary. The ~~claimant~~ *creditor*, beneficiary, or trustee who failed timely to file a written pleading upon notice may not participate further in the proceeding for the determination requested, and that ~~claimant~~ *creditor*, beneficiary, or trustee shall be bound by the decision in the proceeding.

(b) The court's order, when final, shall be conclusive as to the liability of the trust property with respect to the claims at issue in the petition. In the event of a subsequent administration of the estate of the deceased settlor, that order shall be binding on the personal representative of the estate of the deceased settlor as well as all ~~claimants~~ *creditors* and beneficiaries who had notice of the petition.

SEC. 13. Section 19040 of the Probate Code is amended to read:

19040. (a) Publication of notice pursuant to this section shall be for at least 15 days. Three publications in a newspaper published once a week or more often, with at least five days intervening between the first and last publication dates, not counting the first and last publication



dates as part of the five-day period, are sufficient. Notice shall be published in a newspaper of general circulation in the city, county, or city and county in this state where the deceased settlor resided at the time of death, or if none, in the city, county, or city and county in this state wherein trust property was located at the time of the settlor's death, or if none, in the city, county, or city and county in this state wherein the principal place of administration of the trust was located at the time of the settlor's death. If there is no newspaper of general circulation published in the applicable city, county, or city and county, notice shall be published in a newspaper of general circulation published in this state nearest to the applicable city, county, or city and county seat, and which is circulated within the applicable city, county, or city and county. If there is no such newspaper, notice shall be given in written or printed form, posted at three of the most public places within the community. For purposes of this section, "city" means a charter city as defined in Section 34101 of the Government Code or a general law city as defined in Section 34102 of the Government Code.

(b) The caption of the notice, the deceased settlor's name, and the name of the trustee shall be in at least 8-point type, the text of the notice shall be in at least 7-point type, and the notice shall state substantially as follows:

NOTICE TO CREDITORS  
OF \_\_\_\_\_ # \_\_\_\_\_  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

Notice is hereby given to the creditors and contingent creditors of the above-named decedent, that all persons having claims against the decedent are required to file them with the Superior Court, at \_\_\_\_\_, and mail a copy to \_\_\_\_\_, as trustee of the trust dated \_\_\_\_\_ wherein the decedent was the settlor, at \_\_\_\_\_, within the later of four months after \_\_\_\_\_ (the date of the first publication of notice to creditors) or, if notice is mailed or personally delivered to you, ~~30~~ 60 days after the date this notice is mailed or personally delivered to you. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

\_\_\_\_\_  
(name and address of trustee or attorney)

(c) An affidavit showing due publication of notice shall be filed with the clerk upon completion of the publication. The affidavit shall contain a copy of the notice, and state the date of its first publication.

SEC. 14. Section 19050 of the Probate Code is amended to read:

19050. (a) ~~If Subject to Section 19054~~, if the trustee has knowledge of a creditor of the deceased settlor, the trustee shall give notice to the creditor, unless notice is not required pursuant to Section 19054. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a trustee has knowledge of a creditor of the deceased settlor if the trustee is aware that the creditor has demanded payment from the deceased settlor or the trust estate.

~~(b) The provision of notice under this chapter is in addition to the publication of notice under Section 19040.~~

SEC. 15. Section 19051 of the Probate Code is amended to read:

19051. (a) ~~Except as provided in subdivision (b) or (c), the~~ The notice shall be given within ~~the latter of:~~

(a) ~~four~~ Four months after the first publication of notice under Section 19040.

(b) ~~If the trustee first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30~~ Thirty days after the trustee first has knowledge of the creditor.

(c) ~~If the trustee first has knowledge of a creditor after expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the trustee first has knowledge of the creditor.~~

SEC. 16. Section 19052 of the Probate Code is amended to read:

19052. The notice shall be in substantially the following form:

NOTICE TO CREDITORS  
OF \_\_\_\_\_ # \_\_\_\_\_  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

Notice is hereby given to the creditors and contingent creditors of the above-named decedent, that all persons having claims against the decedent are required to file them with the Superior Court, at \_\_\_\_\_, and mail or deliver a copy to \_\_\_\_\_, as trustee of the trust dated \_\_\_\_\_ wherein the decedent was the settlor, at \_\_\_\_\_, within the later of four months after \_\_\_\_\_ (the date of the first publication of notice to creditors) or, if notice is mailed or personally delivered to you, ~~30~~ 60 days after the date this notice is mailed or personally delivered to you, or you must petition to file a late claim as provided in Section 19103 of the Probate Code. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

\_\_\_\_\_ (Date of mailing this notice if applicable)  
\_\_\_\_\_ (name and address of trustee or attorney)

SEC. 17. Section 19053 of the Probate Code is amended to read:

19053. (a) If the trustee believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the trustee is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the trustee fails to give notice required by this chapter, the trustee is not liable to any person for that failure, unless a creditor establishes all of the following:

(1) The failure was in bad faith.

(2) ~~Neither the~~ The creditor ~~nor the attorney representing the creditor in the matter~~ had no actual knowledge of the proceedings under Chapter 1 (commencing with Section 19000) sooner than one year after publication of notice to creditors under Section 19040, and payment would have been made on the creditor's claim if the claim had been properly filed.

(3) Within 16 months after the first publication of notice under Section 19040, the creditor did both of the following:

(A) Filed a petition requesting that the court in which the proceedings under Chapter 1 (commencing with Section 19000) were initiated make an order determining the liability of the trustee under this subdivision.

(B) At least 30 days before the hearing on the petition, caused notice of the hearing and a copy of the petition to be served on the trustee in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(c) Nothing in this section affects the liability of the trust estate, if any, for the claim of a creditor, and the trustee is not liable to the extent the claim is paid out of the trust estate.

(d) Nothing in this chapter imposes a duty on the trustee to make a search for creditors of the deceased settlor.

SEC. 18. Section 19100 of the Probate Code is amended to read:

19100. (a) A ~~claimant~~ creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the first publication of notice to creditors under Section 19040.

(2) ~~Thirty Sixty~~ days after the date actual notice is mailed or personally delivered to the creditor, ~~if notice is given within the time provided in subdivision (a) or (b) of Section 19051.~~ *Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure.*

~~(b) Notwithstanding Section 19103, a reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a), unless the provision or context requires otherwise.~~

*(b) A reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a).*

*(c) Nothing in this section shall be interpreted to extend or toll any other statute of limitations. The reference in this subdivision to a "statute of limitations" includes Section 366.2 of the Code of Civil Procedure.*

SEC. 19. Section 19103 of the Probate Code is amended to read:

19103. (a) Upon petition by a ~~claimant and upon giving notice of hearing in the manner and to the person set forth in Section 19024~~ creditor or the trustee, the court may allow a claim to be filed after expiration of the time *for filing a claim* provided in Section 19100 if it appears that either of the following conditions are satisfied:

~~(1) Neither the claimant nor the attorney representing the claimant in the matter had actual knowledge of the proceeding under this part more than 15 days before expiration of the time provided in Section 19100, and the claimant's petition was filed within 30 days after either the claimant or the claimant's attorney had actual knowledge of the proceeding whichever occurred first.~~

~~(2) Neither the claimant nor the attorney representing the claimant in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 19100 and the claimant's petition was filed within 30 days after either the claimant or the claimant's attorney had knowledge of the existence of the claim whichever occurred first.~~

*(1) The trustee failed to send proper and timely notice to the creditor, and that petition is filed within 60 days after the creditor has actual knowledge of the administration of the trust.*

*(2) The creditor had no knowledge of the facts giving rise to the existence of the claim more than 30 days prior to the time for filing a claim as provided in Section 19100, and the petition is filed within 60 days after the creditor has actual knowledge of both of the following:*

*(A) The existence of the facts reasonably giving rise to the existence of the claim.*

*(B) The administration of the trust.*

(b) ~~The~~ Notwithstanding subdivision (a), the court shall not allow a claim to be filed under this section more than one year after the date of first publication of notice to creditors under Section 19040. Nothing in this subdivision authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable. The court may deny the claimant's petition if a distribution to trust beneficiaries or payment to general creditors has been made and it appears the filing or establishment of the claim would cause or tend to cause unequal treatment among beneficiaries or creditors.

(a) (d) Regardless of whether the claim is later established in whole or in part, property distributed under the terms of the trust subsequent to an order settling claims under Chapter 2 (commencing with Section 19020) and payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Chapter 12 (commencing with Section 19400) and subject to Section 19053, the trustee, distributee, or payee is not liable on account of the prior distribution or payment. *Nothing in this subdivision limits the liability of a person who receives a preliminary distribution of property to restore to the trust an amount sufficient for payment of the beneficiary's proper share of the claim, not exceeding the amount distributed.*

SEC. 20. Section 19104 of the Probate Code is amended to read:

19104. (a) Subject to subdivision (b), if a claim is filed within the time provided in this chapter, the ~~claimant~~ creditor may later amend or revise the claim. The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision to specify the amount of a claim that, at the time of filing, was not due, was contingent, or was not yet ascertainable, is not an increase in the amount of the claim within the meaning of this subdivision.

(c) An amendment or revision of a claim may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order approving settlement of the claim against the deceased settlor under Chapter 2 (commencing with Section 19020).

(2) One year after the date of the first publication of notice to creditors under Section 19040. Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.

SEC. 21. Section 19150 of the Probate Code is amended to read:

19150. (a) A claim may be filed by the ~~claimant~~ creditor or a person acting on behalf of the claimant.

(b) A claim shall be filed with the court and a copy shall be mailed to the trustee. Failure to mail a copy to the trustee does not invalidate a properly filed claim, but any loss that results from the failure shall be borne by the ~~claimant~~ creditor.

SEC. 22. Section 19151 of the Probate Code is amended to read:

19151. (a) A claim shall be supported by the affidavit of the ~~claimant~~ *creditor* or the person on behalf of the claimant stating:

(1) The claim is a just claim.

(2) If the claim is due, the facts supporting the claim, the amount of the claim, and that all payments on and offsets to the claim have been credited.

(3) If the claim is not due or contingent, or the amount is not yet ascertainable, the facts supporting the claim.

(4) If the affidavit is made by a person other than the ~~claimant~~ *creditor*, the reason it is not made by the ~~claimant~~ *creditor*.

(b) The trustee may require satisfactory vouchers or proof to be produced to support the claim. An original voucher may be withdrawn after a copy is provided. If a copy is provided, the copy shall be attached to the claim.

SEC. 23. Section 19154 of the Probate Code is amended to read:

19154. (a) Notwithstanding any other provision of this part, if a ~~claimant~~ *creditor* makes a written demand for payment within the time specified in Section 19100, the trustee may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded.

(b) Nothing in this section limits application of the doctrines of waiver, estoppel, laches, or detrimental reliance or any other equitable principle.

SEC. 24. Section 19251 of the Probate Code is amended to read:

19251. (a) Any allowance or rejection shall be in writing. The trustee shall file the allowance or rejection with the court clerk and give notice to the ~~claimant~~ *creditor*, together with a copy of the allowance or rejection, as provided in Section 1215.

(b) The allowance or rejection shall contain the following information:

(1) The name of the ~~claimant~~ *creditor*.

(2) The date of the settlor's death.

(3) The total amount of the claim.

(4) The amount allowed or rejected by the trustee.

(5) A statement that the ~~claimant~~ *creditor* has 90 days from the time the notice of rejection is given, or 90 days after the claim becomes due, whichever is later, in which to bring an action on a claim rejected in whole or in part.

(c) The Judicial Council shall prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements.

(d) This section does not apply to a demand the trustee elects to treat as a claim under Section 19154.

SEC. 25. Section 19252 of the Probate Code is amended to read:

19252. The trustee shall have the power to pay any claim or portion of a claim and payment shall constitute allowance of the claim to the extent of the payment. The trustee shall have the power to compromise any claim or portion of a claim. If the trustee or the attorney for the trustee is a ~~claimant~~ *creditor* of the deceased settlor, the trustee shall have the same powers regarding allowance, rejection, payment, or compromise set forth in this chapter.

SEC. 26. Section 19254 of the Probate Code is amended to read:

19254. If within 30 days after a claim is filed the trustee has refused or neglected to act on the claim, the refusal or neglect may, at the option of the ~~claimant~~ *creditor*, be deemed equivalent to the giving of a notice of rejection on the 30th day.

SEC. 27. Section 19255 of the Probate Code is amended to read:

19255. (a) A rejected claim is barred as to the part rejected unless the ~~claimant~~ *creditor* brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding any time during which there is a vacancy in the office of the trustee:

(1) If the claim is due at the time of giving the notice of rejection, 90 days after the notice is given.

(2) If the claim is not due at the time of giving the notice of rejection, 90 days after the claim becomes due.

(b) In addition to any other county in which an action on a rejected claim may be commenced, the action may be commenced in the county or city and county wherein the principal place of administration of the trust is located.

(c) The ~~claimant~~ *creditor* shall file a notice of the pendency of the action or the referral to a referee or to arbitration with the court clerk in the trust proceeding, together with proof of giving a copy of the notice to the trustee as provided in Section 1215. Personal service of a copy of the summons and complaint on the trustee is equivalent to the filing and giving of the notice.

(d) Any property distributed by the trustee under the terms of the trust after 120 days from the later of the time the notice of rejection is given or the claim is due and before the notice of pendency of action or referral or arbitration is filed and given, excluding therefrom any time during which there is a vacancy in the office of the trustee, is not subject to the claim. Neither the trustee nor the distributee is liable on account of the distribution.

(e) The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees. For the purpose of this subdivision, the prevailing party shall be the trustee if the creditor recovers an amount equal to or less than the amount of the claim allowed by the trustee, and shall be the creditor if the creditor recovers an amount greater than the amount of the claim allowed by the trustee.